



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR98-1061

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115104.

The City of Fort Worth (the "city") received two requests for copies of disciplinary letters written from city management to specific city employees.¹ You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the city has confirmed that complaints have been filed with the Texas Commission on Human Rights alleging unlawful discrimination by the city against two of the employees. You state that the third employee was their supervisor. This office has previously held that a pending complaint before the Equal Employment Opportunity Commission indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Similarly, a complaint filed with the Texas Commission on Human Rights presents the same potential for litigation. Therefore, the city has met the first prong of the section 552.103(a) test. After examining the submitted

¹You state that one of the requestors has agreed to limit her request to the submitted three letters.

materials, we also conclude that the requested information is related to the anticipated litigation. Therefore, the city may withhold from required public disclosure the requested information under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/glg

Ref.: ID# 115104

Enclosures: Submitted documents

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